

Estate of Oscar Ough, Sr.

IBIA 71-2

Decided March 25, 1971

Indian Probate: Administrative Procedure Act: Applicability to Indian Probate

The requirement of the Administrative Procedure Act, that all decisions of an Examiner shall include a statement of findings and conclusions, and the reasons or basis therefor, on all the material issues of fact, law, or discretion presented on the record, is mandatory and applicable to all decisions of Examiners in Indian Probate proceedings.

Indian Probate: Yakima Tribes: Generally

The amendment to the Yakima Enrollment Act, 84 Stat. § 1874, applies to all cases not closed at the time the amendment was enacted, and a case on appeal to the Board of Indian Appeals is considered to be open within the meaning of the amendment.

ESTATE OF OSCAR OUGH, SR.	:	Order Denying Petition
	:	for Rehearing Reversed
Yakima Allottee No. 2193	:	
of the Yakima Indian Agency	:	
Toppenish, Washington	:	IBIA 71-2
	:	
Probate No. E-189-59	:	March 25, 1971

This is an appeal filed by Oscar Ough, Jr., son of the decedent, from an order issued June 4, 1970, by the Examiner of Inheritance denying a petition for rehearing and affirming an earlier order determining the heirs of Oscar Ough, Sr. under the Yakima Enrollment Act, 25 U.S.C. § 607 (1964). Appellant filed his appeal with this Board on August 5, 1970, and was within the time requirement prescribed by 25 CFR 15.19. 1/

In his appeal, Oscar Ough, Jr. claims that the Dalles Dam Settlement Funds are not part of the restricted estate subject to the Yakima Enrollment Act, and should therefore be distributed to the children of the deceased, without reference to whether such persons are eligible under the Act to take as heirs. On the basis of the record we are unable to determine if appellant's contention is correct. In the Order Denying the Petition for Rehearing the Examiner stated that "It has been held that such funds were subject to this Act," but no basis was given in the order

1/ Ben Ough, son of decedent and full brother of Oscar Ough, Jr. has filed an untimely appeal from this order. Title 25 CFR § 15.19 requires that an appeal be filed within 60 days. Ben Ough's appeal exceeded this time limit by more than 30 days. We note, however, that the decision on Oscar Ough, Jr.'s appeal could dispose of the merits of Ben Ough's appeal. Estate of Edward (Edwin) Thomas, IA-836 (May 2, 1966).

or reaching this conclusion.

We find that the record before us is incomplete and that a proper determination cannot be made on the basis of such negligible evidence.

25 CFR 15.15 of the Regulations requires that findings of fact and conclusions of law shall be incorporated in the Examiner's decision. Also, Indian Probate proceedings are subject to the Administrative Procedure Act 2/ which provides in 5 U.S.C. § 557 (Supp. V, 1970), formerly ch. 324, § 8, 60 Stat. 242 (1946):

(c) * * * All decisions, including initial, recommended, and tentative decisions, are a part of the record and shall include a statement of --

(A) findings and conclusions, and the reasons or basis therefor, on all material issues of fact, law, or discretion presented on the record; and

(B) the appropriate rule, order, sanction, relief, or denial thereof.

Therefore, we remand this case to the examiner to make findings of fact and conclusions of law as required by the regulations and the A.P.A.

In addition we find that since this case was considered by the Examiner the Yakima Enrollment Act has been amended. The amendment passed in December of 1970 affects the class of heirs eligible to take under the Act. see 84 Stat. § 1874. The revisions contained within this recent amendment pertain to all cases not closed at the time the amendment was enacted. We consider this case to be open within the meaning of the amendment since the assets of the estate were still undistributed at the time the subject amendment was brought into force 3/, and the appeal procedures

2/ Estate of Charles White, 70 I.D. 102 (1963).

3/ In his letter of July 22, 1966, Richard J. Montgomery, Examiner of Inheritance, authorized Floyd H. Phillips, Superintendent of the Yakima Indian Agency to proceed and distribute one-half of the income from the land accruing since decedent's death to the surviving wife because her share was not in question in this case.

within the Department have not been exhausted. In that the Examiner was unable to take this most recent change into consideration in his original decision and in his denial of appellant's petition for a rehearing, we think it proper to remand the case to the Examiner for reconsideration of the right of the appellant to share in the estate under the amended act.

Under the authority delegated to the Board of Indian Appeals by the Secretary of the Interior in 35 F.R. 12081, we reverse the Order Denying the Petition for Rehearing and remand this case to the Examiner for completion of the record and for further hearings, if necessary, to determine whether the parties, including the Yakima tribe, have acquired rights under the amended law.

David J. McKee, Chairman
Board of Indian Appeals

Concur:

David Doane, Alternate Member
Board of Indian Appeals

March 25, 1971